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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,181	03/29/2004	Andrea Caserta	P/4043-119	5827

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NEW YORK, NY 100368403

EXAMINER
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PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,181	<b>Applicant(s)</b> CASERTA ET AL.	
	<b>Examiner</b> Sang Y. Paik	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-8,10-15 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-15 and 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2, 4-8, 10-14 and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no proper antecedent basis for "said portion of the wick".

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 4, 6, 7, 8, 10, 13, 14, 15, 19, 20 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Pedrotti et al (US 6,917,754).

Pedrotti shows the device claimed including a casing, a volatile substance, a wick, a heater having a rectangular shape having a planar surface wherein Pedrotti further shows that the heater can comprise heating elements to facilitate the volatile substance in the wick, a cylindrical pipe with open ends and a perimetric chamber defined at a lower end containing the wick and creating a chimney effect, the pipe further having a lateral opening wherein the pipe is rotated in

Art Unit: 3742

one plane so that the evaporation can take effects in the minimum and the maximum evaporations depending on the degree of the overlap of the wick through the lateral opening of the pipe and the heating elements.

***Allowable Subject Matter***

5. Claims 5, 11, 12 and 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 8/3/06 have been fully considered but they are not persuasive.

The applicant argues that the disclosed pipe element 4 of Pedrotti does not contain all the elements associated with "pipe". The applicant argues that having a partially removed wall is no longer a tube or pipe and thus the pipe element 4 of Pedrotti does not qualify as a "pipe" even though Pedrotti calls such element as a pipe. This argument is not deemed persuasive since a pipe can incorporate various openings including a removed wall. Having a removed wall alludes to the fact that the element 4 had an entirely tubular shape but now with a removed wall. Such incorporation of the removed wall would not disqualify the element 4 as a pipe just as having the lateral opening in the recited tubular pipe does not disqualify the applicant's tube as a pipe.

The applicant argues that no chimney effect would be created since there is only a "ring" and not a chamber as recited by the applicant. This argument is not deemed persuasive. There is no positive indication or showing that no chimney effect would be created by the "ring" of the pipe element 4. Perhaps, the chimney effect may not be as substantially as that of the claimed

Art Unit: 3742

pipe but there is no claimed structure as to distinguish the chamber of Pedrotti from that of the claimed chamber.

The applicant also discussed the applicant's cited reference EP '062 (see Form 1449 filed on 4/20/06) that while EP '062 discloses the chimney effect, there is no mention of the chimney effect in the corresponding location of Pedrotti, and this deletion in Pedrotti suggests that no such chimney effect is actually created by its device in Pedrotti. This argument is not deemed persuasive since there is no controlling authority to conclude that deleting a portion in an equivalent application would mean no such equivalent teaching can be had in other equivalent applications. Furthermore, the recited claimed structure is met by that of the prior art and even if there is no explicitly mention of its chimney effect functions, such is presumed to be inherent as having an equivalent structure. MPEP 2112.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3742

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sang Y Paik  
Primary Examiner  
Art Unit 3742

syp